

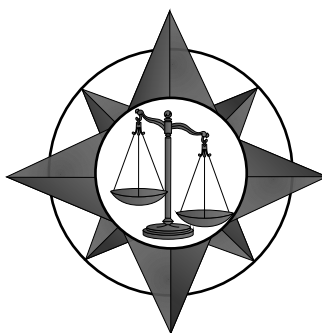
Report of the Local Boundary Commission to the Second Session of the Twenty-Third Alaska State Legislature

January 21, 2004

Areas Addressed in this Report



Darroll Hargraves, Chair
Georgianna Zimmerle, 1st Judicial District
Robert Harcharek, 2nd Judicial District
Robert Hicks, Vice-Chair, 3rd Judicial District
Anthony Nakazawa, 4th Judicial District



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Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission Staff at 907-269-4560.

This report is also available on the Local Boundary Commission website at:

<http://www.dced.state.ak.us/dca/lbc/lbc.htm>

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Local Boundary Commission

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Robert Hicks, Vice-Chair
Georgianna Zimmerle, Member
Robert Harcharek, Member
Anthony Nakazawa, Member

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Message from the Chair

January 21, 2004

On behalf of the members of the Local Boundary Commission, I am pleased to present this report of the Commission to the Second Session of the Twenty-Third Alaska State Legislature.

Chapter 1 provides background information on the Local Boundary Commission.

Chapter 2 describes activities of the Commission and its staff during 2003, including the Commission's disposition of a petition to incorporate a city in Gustavus. The work of the Commission and the Department of Education and Early Development to address school consolidation issues as requested by the State Legislature is also addressed in Chapter 2. Additionally, Chapter 2 describes several proposals currently under consideration by municipalities and voters throughout Alaska.

Chapter 3 contains a discussion of vital public policy issues of particular interest to the Commission. These include the following matters:

- Concerns regarding elimination of longstanding ambiguities in existing law regarding when newly incorporated, annexed, and detached properties are subject to municipal property taxes. The Commission urges the adoption of those provisions (i.e., Sections 3 and 5) of CSSB 63(STA) that accomplish that elimination.
- Concerns relating to proposed changes to laws governing merger and consolidation of municipal governments. HB 38 and HB 363 are counter to the Constitutional principles of minimizing local government units and tax levying jurisdictions and repudiate the principles of representative government. The Commission opposes these bills.
- Concerns relating to substantial disincentives hindering borough incorporation and annexation and impeding the proper development of local government in Alaska. In that context, the Commission respectfully urges the Legislature to promote borough incorporation and annexation in those areas that have the human and financial resources to support local government operations.

There were no local boundary changes approved by the Commission in 2003 that require legislative review under Article X, Section 12 of the Alaska Constitution.

The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

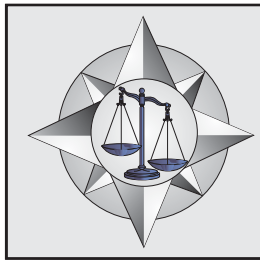
Cordially,

A handwritten signature in black ink, appearing to read "Darroll Hargraves". The signature is fluid and cursive, with a large initial "D".

Darroll Hargraves
Chair

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CHAPTER 1

BACKGROUND & PROCEDURES

Background on the Local Boundary Commission

Constitutional Origin of the Local Boundary Commission

The framers of Alaska's constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution." (Victor Fischer, *Alaska's Constitutional Convention*, p. 124.) The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments by providing for the creation of the Local Boundary Commission (LBC or Commission) in Article X, Section 12 of the constitution.¹

The LBC is one of only five State boards or commissions established in the Constitution (among a

current total of approximately 120 active boards and commissions).² The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes. These are:

- incorporation of municipalities;³

¹ Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

² The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

³ The term "municipalities" includes both city governments and borough governments.

- ➡ reclassification of city governments;
- ➡ annexation to municipalities;
- ➡ dissolution of municipalities;
- ➡ detachment from municipalities;
- ➡ merger of municipalities; and
- ➡ consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- ➡ make studies of local government boundary problems;
- ➡ adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- ➡ make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's constitution.

Further, the LBC is routinely assigned duties by the Legislature; e.g., the 2002 requirement to study the unorganized borough and determine which areas meet borough incorporation standards and the 2003 directive to work with the

Department of Education and Early Development regarding school district consolidation.

LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁴

The LBC must, of course, proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

Communications with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds

the right of everyone to due process and equal protection.

Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly pre-

⁴ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna*

serves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at the following address, telephone number, facsimile number, or e-mail address:

Local Boundary Commission
Staff
550 West Seventh Avenue,
Suite 1770
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4559
Fax: (907) 269-4539
Alternate fax: (907) 269-4563
E-mail: LBC@dced.state.ak.us

LBC Membership

The LBC is an independent, quasi-judicial commission. Members of the LBC are appointed by the Governor for five-year overlapping terms. (AS 44.33.810.)

Notwithstanding their terms, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d).)

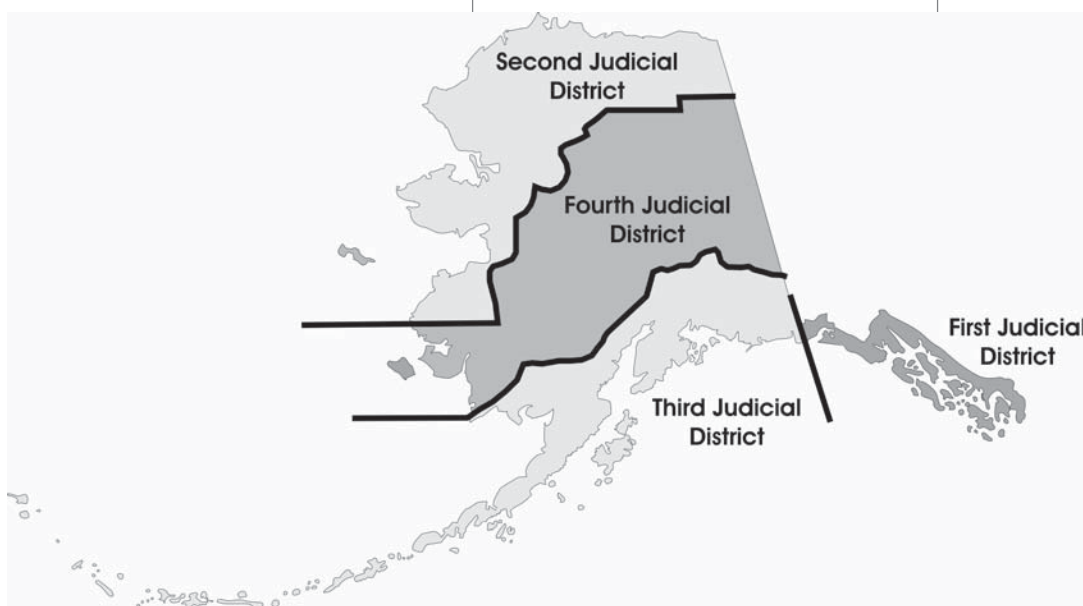
The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060.)

LBC members receive no pay for their service on the Commission. However, they are entitled to the

travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.



Darroll Hargraves, Chair, At-Large Appointment, Wasilla

Darroll Hargraves of Wasilla was appointed Chair of the LBC by Governor Murkowski in March 2003. Commissioner Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska, Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been School Superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/communications consultant working with school districts and nonprofit organizations. Commissioner Hargraves previously served as Chair of the LBC from 1992-1997. His current term on the Commission expires on January 31, 2008.



Georgianna Zimmerle, First Judicial District, Ketchikan

Georgianna Zimmerle serves from the First Judicial District. She is a resident of Ketchikan. Commissioner Zimmerle was appointed to the Commission on March 25, 2003. An Alaska Native, Commissioner Zimmerle is Tlingit and Haida. She is currently the General Manager for Ketchikan Indian Community. She worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Her current term on the Commission expires January 31, 2006.

Robert Harcharek, Second Judicial District, Barrow

Robert Harcharek serves from the Second Judicial District. He was appointed to the LBC on July 18, 2002. Commissioner Harcharek has lived and worked on the North Slope for more than 20 years. He has been a member of the Barrow City Council since 1993 and a member of the North Slope Borough School Board since 1999. He is a Senior Planner and Social Science Researcher for the North Slope Borough Planning Department. Commissioner Harcharek earned a Ph.D in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Capital Improvement Projects and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for two years as a Peace Corps Volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska Municipal League Legislative Committee. His current term on the Commission expires on January 31, 2004.

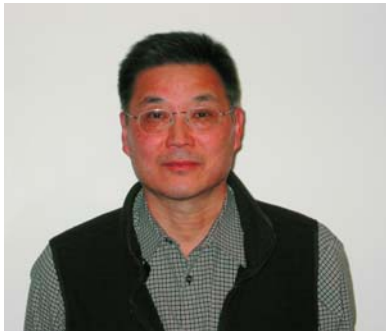


Robert Hicks, Vice-Chair, Third Judicial District, Seward

Robert Hicks of Seward was appointed to the LBC from the Third Judicial District by Governor Murkowski in March 2003. His fellow Commissioners elected him Vice-Chair of the LBC. Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the areas in which he specialized as an attorney was the field of local government, including the LBC. Since 2001, Commissioner Hicks has served as the Director of Corporate Affairs and the Dive Officer at the Alaska SeaLife Center in Seward. He also is an Adjunct Instructor in Alaska Outdoor and Experiential Education at the University of Alaska in Anchorage. Commissioner Hicks' current term on the LBC expires on January 31, 2007.



Dr. Anthony Nakazawa, Fourth Judicial District, Fairbanks



Anthony “Tony” Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003. Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/University of Alaska Fairbanks, which includes district offices in ten communities throughout Alaska. He previously served as the director of the Division of Community and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981 and with the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971, and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the Commission expires December 21, 2004.

Staff to the Commission

The Alaska Department of Community and Economic Development (DCED), Division of Community Advocacy (DCA) provides staff to the Commission.

Constitutional Origin of the Local Government Agency

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the constitution "unless a grave need existed" for such. In addition to the previously noted five boards and commissions named in the constitution, the framers provided for only one State agency or department – the local government agency mandated by Article X, Section 14 to advise and assist local governments.⁵ The constitutional duty to support local governments is entrusted to DCED.⁶ Within DCED, the DCA carries out the duty to advise and assist local governments.

It is worth reflecting that of the six boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local governments. The prominence that the framers of Alaska's constitution gave to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the constitution was dependent, in large part, upon those two entities. The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

DCED Serves as Staff to the LBC



DCED serves as staff to the LBC pursuant to AS

44.47.050(a)(2). DCED's duties as LBC staff are carried out by the DCA Municipal Policy and Research Section.

DCED is required by AS 29.05.080 and 3 AAC 110.530 to investigate each municipal incorporation proposal and to make recommendations regarding such to the LBC. As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCED adopts

⁵ Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

⁶ AS 44.33.020 provides that DCED "shall (1) advise and assist local governments."

the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, DCED's self-imposed standard requires its recommendations to the LBC to be based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. DCED takes the view that due process is best served by providing thorough, credible, and objective analysis of every municipal boundary proposal to come before the LBC.

DCED's Commissioner, Deputy Commissioners, and the Director of DCA provide policy direction concerning recommendations to the LBC.

DCED's recommendations to the LBC are not binding on the LBC. As noted previously, the LBC is an independent commission. While the Commission is not obligated to follow DCED's recommendations, it has, nonetheless, historically considered DCED's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.



DCED staff listening to resident concerns during a recent informational meeting.

DCED staff also deliver technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others.

Types of assistance provided by DCED staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during Commission hearings;
- providing technical support during Commission meetings;
- drafting decisional statements;
- implementing decisions of the Commission;
- certifying actions;
- maintaining incorporation and boundary records for each of Alaska's 161 municipal governments;
- drafting reports, correspondence, public notices, legislation, or regulations as requested by the Commission;
- coordinating, scheduling, and overseeing public meetings and hearings for the Commission;

- developing orientation materials and providing training for new Commission members;
- maintaining and preserving Commission records in accordance with the public records laws of the State;
- developing and updating forms and related materials for use in municipal incorporation or alteration; and
- if directed by the Commission, act as a petitioner on a matter that the Commission believes will promote local government standards in the Alaska Constitution, AS 29.04, AS 29.05, or AS 29.06.

Given other DCED work assignments, there are less than two full-time equivalent positions assigned to work on Commission matters.

Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the

Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

Preparation and Filing of the Petition

DCED offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. DCED routinely advises petitioners to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulation of the petition for voter signatures or formal adoption by a municipal government sponsor.

Once a formal petition is prepared, it is submitted to DCED for technical review. If the petition contains all the information required by law, DCED accepts the petition for filing.

Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. Interested parties are typically given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

Analysis

Following the public comment period, DCED analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and DCED may conduct informational meetings. At the conclusion of its investigation, DCED issues a preliminary report for public review and comment. The report includes a



The LBC listening to testimony at a recent hearing.

formal recommendation to the LBC for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, DCED issues its final report. The final report includes a discussion of comments received on the preliminary report and notes any changes to DCED's recommendations to the Commission. The final report must be issued at least three weeks prior to the hearing on the proposal.

Commission Review of Materials and Public Hearings

Members of the Commission review the petition, responsive briefs, written comments, reply brief, and DCED reports. If circumstances permit, Commission members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the Commission conducts at least one hearing in or near the affected territory.

The Commission must act on the petition within ninety days of its final public hearing.

The Commission may take any one of the following actions:

- approve the petition as presented;
- amend the petition (e.g., expand or contract the proposed boundaries);
- impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- deny the petition.

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the Commission must adopt a written statement setting out the basis for it. Copies of the statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final, but is subject to reconsideration. Any party may ask the Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Com-

mission does not approve a request for reconsideration within thirty days of the date that the decision became final, the request for reconsideration is automatically denied.

Implementation

If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that

has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. The action must also receive favorable review under the Federal Voting Rights Act. DCED provides assistance with Voting Rights Act matters.

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CHAPTER 2

ACTIVITIES & DEVELOPMENTS

DURING 2003

City Incorporation

City incorporation activities occurred in the following localities during 2003:

- Anchor Point
- Crooked Creek
- Gustavus
- Hyder
- Meadow Lakes
- Naukati Bay
- Salcha
- Talkeetna



Anchor Point

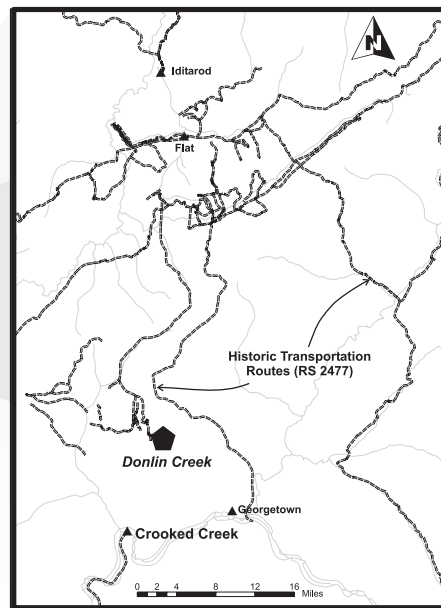
The Anchor Point Chamber of Commerce requested assistance with apprising people in the community about city incorporation and the process therefor. The Chamber requested that an LBC Staff member attend a meeting and explain the matter for the community. Interest in incorporation appears to be related to economic devel-

opment and public safety, particularly during fishing season. Staff provided the requested assistance and distributed materials relevant to city incorporation. Staff also encouraged the community to work with representatives from the Kenai Peninsula Borough and the Cities of Homer, Kenai, Seldovia, Seward, and Soldotna to develop revenue and expense projections for the city of Anchor Point.

Crooked Creek

A resident of Crooked Creek requested assistance with beginning the incorporation process for Crooked Creek to be a second class city. She indicated that the Tribal Council had requested that she pursue the matter for the community. She explained that the community desires to have control over the port if one is built regarding the

Location Map of Crooked Creek and the Donlin Creek Mine



Donlin Creek mining activities. LBC Staff provided petition forms for incorporation of a second class city, as well as other relevant materials regarding such incorporation.

Subsequently, a representative of Calista Corporation requested information from Staff about the interest expressed by some members of the community to incorporate as a city. Staff explained that a request for information had been received by LBC staff and information was provided but that additional information could be distributed if needed. The Calista representative observed that a presentation on the pro's and con's of city incorporation might be helpful at some later date.

Gustavus

The Petition to Incorporate Gustavus as a Second Class City in the Unorganized Borough (Petition) proposed establishment of a second class city with boundaries totaling 39.25 square miles of land and water. A portion of that area lies within Glacier Bay National Park and Preserve and includes submerged lands and tide-lands in Bartlett Cove. The area proposed for incorporation was identical to that approved by the Commission in 1997 regarding a similar petition to incorporate Gustavus as a second class city, which incorporation failed to win majority approval during election.

Forty-seven individuals signed the Petition. It was subsequently determined that thirty-eight of the signatures were from qualified voters. The thirty-eight signatures were sufficient to satisfy the requirements of AS 29.05.060(12) for filing the Petition. On March 4, 2003, the DCED completed its technical review of the Petition and accepted it for filing.

In August 2003, the DCED completed its preliminary report on the Gustavus incorporation proposal. The DCED concluded that the Gustavus incorporation proposal met the thirteen applicable standards established in the Constitution, Alaska Statutes, and the Alaska Administrative Code. Consequently, the DCED recommended that the Commission approve the Petition without modification.

Following the informational public meeting held in Gustavus to discuss the incorporation proposal, the DCED issued its final report to the Commission on the Gustavus incorporation proposal. In the final report the DCED addressed the written comments on preliminary report and the significant developments

regarding the Gustavus incorporation proposal that had occurred since issuance of its preliminary report.

The DCED's final report affirmed the analysis and conclusions set out in the preliminary report with respect to all standards but recommended that the Commission amend the petition to provide that the proposed levy of the 4 percent excise tax will apply only to overnight accommodations.

The Local Boundary Commission conducted a public hearing in the community of Gustavus on the petition to incorporate Gustavus as a second class city. The DCED recommended that the LBC approve the petition for incorporation with one amendment: to modify the Petition to provide that the 4 percent excise tax will be strictly a 'bed tax' (i.e., it will apply only to short-term overnight accommodations). Approximately 100 people attended from the community.

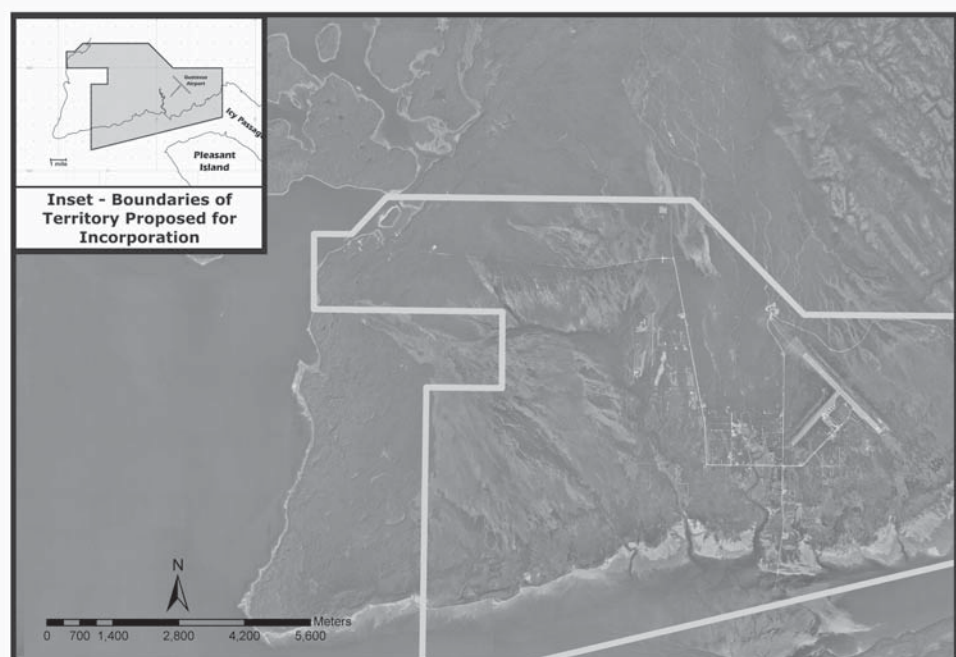
Immediately following conclusion of the public

hearing, the LBC held a decisional session to discuss the incorporation petition and the DCED's recommendations. The Commissioners attending the hearing unanimously approved the petition to incorporate Gustavus as a second class city in the unorganized borough but amended the petition to provide that the 4 percent excise tax will be strictly a 'bed tax' (i.e., it will apply only to short-term overnight accommodations), as recommended by the DCED. With the amendment, incorporation of the City of Gustavus will still be conditioned upon voter approval of the proposition authorizing the proposed city to levy the excise taxes (i.e., both the 2 percent general sales tax

and the 4 percent 'bed' tax). On November 17, 2003, the LBC reviewed and approved, without change, a draft decisional statement regarding the petition to incorporate Gustavus as a second class city. No petition for reconsideration of the LBC decision was filed.

On December 8, the Chair of the LBC formally notified the Director of the Division of Elections that the Commission had accepted a petition for incorporation of the City of Gustavus. The Director of the Division of Elections had 30 days to order an election on the matter.

On December 30, 2003, the Director of the Division of Elections issued an order



Boundaries of the proposed second class City of Gustavus.

and notice of election for incorporation of the City of Gustavus. Under AS 29.05.110(a), the Director of the Division of Elections must hold the election not less than 30 days or more than 90 days after the date of the election order. The election for the incorporation of the City of Gustavus and the election of initial officials will be conducted by mail on March 16, 2004.

LBC staff has notified the U. S. Department of Justice of the pending election and requested federal Voting Rights Act preclearance for the matter.

Hyder

Staff provided forms to petition for incorporation of a second class city, together with other relevant materials to two residents of Hyder. The Hyder Community Association is interested in initiating a petition for incorporation of Hyder as a second class city in the unorganized borough.

Meadow Lakes

LBC staff provided extensive information and materials to residents of the Meadow Lakes area regarding formation of a city

government. The Meadow Lakes area lies between Wasilla and Houston. Emphasis was placed on the standards and guidelines for determining whether a settlement constitutes a community (3 AAC 110.990(5) and 3 AAC 110.920). Residents were advised to carefully review the limitations on the incorporation of a city (AS 29.05.021(b) and 3 AAC 110.010(b)). It was strongly recommended that if they wish to pursue incorporation, they should confer with officials of the Matanuska-Susitna Borough, City of Wasilla, and City of Houston (both in terms of the limitations noted above and - at least in the case of the Borough - the transition provisions of 3 AAC 110.900).

Naukati Bay

The DCED staff provided information and assistance to residents of Naukati Bay regarding city incorporation. Specifically, information was provided about the proposed revenues and expenditures.

A draft petition was filed with LBC staff for analysis. LBC staff completed its review of the draft petition in December and forwarded

the results of that review to the representative of the residents who are pursuing incorporation.

Salcha

Residents of Salcha made a preliminary inquiry concerning formation of a city government in Salcha.

Talkeetna

The DCED staff received an inquiry from the Matanuska-Susitna Borough planning staff wanting information on municipal incorporation to pass on to Talkeetna residents interested in the issue. That information was provided.

City Annexation

City annexation activities occurred in the following localities during 2003:

- Akutan
- Eagle
- Fairbanks
- Hydaburg
- King Cove
- North Pole
- Palmer
- Pelican
- Petersburg
- Wasilla



Akutan

Officials of the City of Akutan are contemplating annexation of territory to encompass new development adjoining the existing boundaries of the City.

Eagle

Staff of the City of Eagle made inquiries concerning standards for annexation to city governments. It appears that the City of Eagle is developing a proposal for annexation.

Fairbanks

An initiative proposal to drastically cut property taxes and replace them with a 3 percent sales tax was presented to voters of the City of Fairbanks on October 7, 2003. The LBC staff was advised by a City of Fairbanks official that if the proposition were approved, there would be significant interest on the part of some, specifically including the Fred Meyer store, in seeking annexation to the City of Fairbanks. The LBC staff provided information about the local action annexation

process. The sales-tax proposal was voted down. No further inquiries about annexation to the City of Fairbanks have been made to the LBC staff.

Hydaburg

LBC staff provided officials of the City of Hydaburg with information about expanding the City's boundaries to encompass its watershed. Information was also provided about the ability of the City to exercise extraterritorial control over its watershed as an alternative to annexation.

King Cove

A representative of the City of King Cove indicated that the City wishes to petition for annexation. Floating fish processors reportedly use the area in question. The City is concerned that the processors and their employees impact the community, but avoid contributing to the support for community services by operating outside the boundaries of the City. The representative expressed the belief that all of the territory in question is reportedly owned either by the King Cove Native Corporation or the State of Alaska. Petition forms for local action annexation of the territory were provided to the representative.

The Department of Natural Resources declined a request from the City of King Cove to petition the Local Boundary Commission for annexation of approximately twenty square miles of land, tideland, and submerged land to the City of King Cove. That action precludes the use of the local action annexation process. It will compel the City of King Cove to use the legislative review annexation process if it wishes to pursue annexation.

In November, LBC staff reviewed a draft petition for annexation of 22 square miles to the City of King Cove and provided the City's representative suggested revisions and additions to the petition.

North Pole

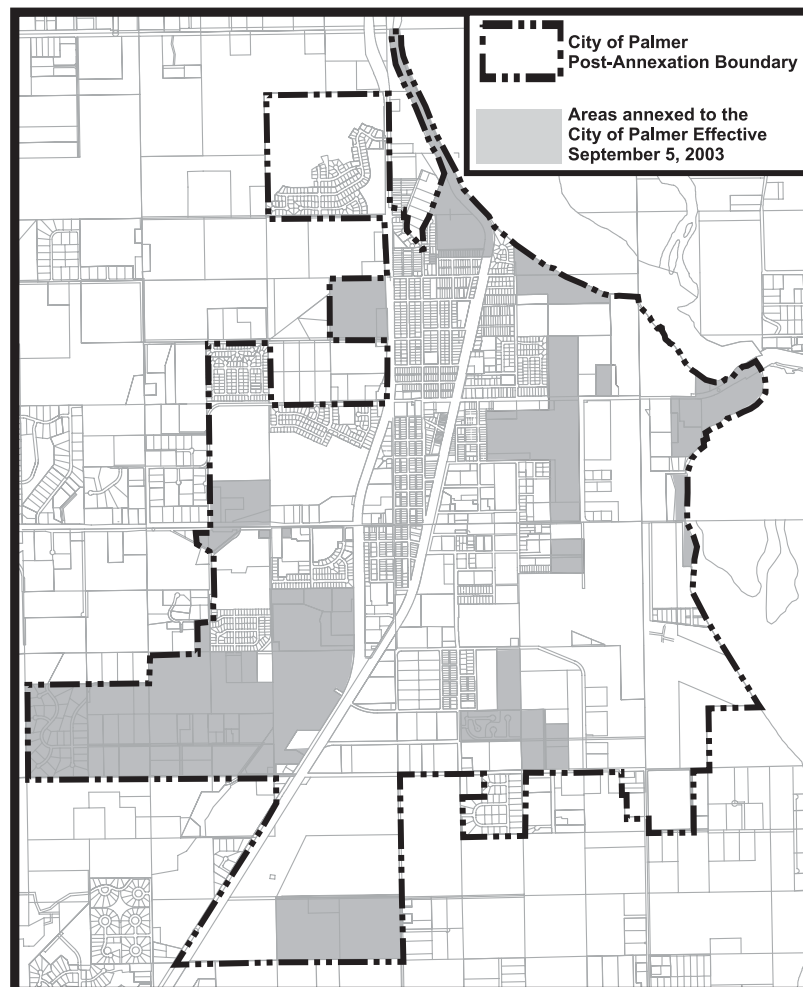
Staff of the City of North Pole indicated that the City wishes to annex four parcels adjoining the City for use as an airport. Petition

forms for annexation of property upon request of all property owners and resident registered voters were updated to conform to current regulations. Those forms and information about standards and procedures were provided to the City of North Pole.

Palmer

In December 2002, the LBC approved the annexation of 861.44 acres to the City of

Post-Annexation Boundaries for the City of Palmer



Palmer. Annexation was subject to tacit approval by the Legislature under Article X, Section 12 of the Alaska Constitution. The tacit approval was given effective March 16, 2003. However, under State law, the annexation did not take effect until the City of Palmer provided evidence to the DCED that Palmer had obtained Justice Department approval of the annexation under the Federal Voting Rights Act.

The City delayed seeking the required Federal Voting Rights Act approval while the Palmer City Council considered a proposal for transitional zoning for newly annexed areas. The proposed transitional zoning proposal was intended to maintain pre-annexation land use provisions for private, nonresidential property absent health or safety concerns. Following review of the City of Palmer Planning and Zoning Commission's recommendation, the City Council rejected the proposal. Consequently, all annexed properties were to be initially designated either residential or public lands.

On September 5, 2003, the City of Palmer submitted documentation to the DCED that Federal Voting Rights Act Preclearance for the annexation had been granted by the U.S. Justice Department. The annexation was effective September 5, 2003.

Pelican

The City of Pelican contemplated annexation of outlying areas, including the settlements of Phonograph and Sunnyside. LBC staff provided information to the Mayor of Pelican regarding annexation standards and procedures. Shortly thereafter, LBC staff met with the Mayor of Pelican. She advised LBC staff that recently reported interest in annexing the settlement of Phonograph to the City of Pelican had abated. Consequently, the City did not intend to pursue annexation of that area in the foreseeable future.

Petersburg

Officials of the City of Petersburg are contemplating annexation of territory to the city government. LBC staff provided information regarding the matters to City representatives.

Wasilla

Based on prior indications that the City of Wasilla is contemplating a local action annexation, the LBC staff provided updated petition forms to the City of Wasilla for that action. An official of the City of Wasilla also indicated that the City might seek a legislative review annexation proposal in the future.

City Dissolution

City dissolution activities occurred in the following localities during 2003:

- ➡ Holy Cross
- ➡ Hydaburg
- ➡ Kivalina
- ➡ Mekoryuk
- ➡ Quinhagak
- ➡ Ruby



Holy Cross

LBC staff spoke with the Vice-Mayor and one council member of the City of Holy Cross regarding dissolution. According to those City officials, the Holy Cross Tribal Council is promoting dissolution of the City of Holy Cross. The City officials characterized the level of interest in dissolution among local residents significant enough to meet the signature requirements to file a formal petition for dissolution. LBC staff provided information about standards and procedures for dissolution. It was stressed that the petitioner must use petition forms provided by the DCED.

In May, LBC staff communicated with a Holy Cross resident regarding the effects of dissolution.

Hydaburg

In October, the City of Hydaburg suspended local government operations (e.g., the City of Hydaburg School District continued to operate). According to new media accounts, the action was taken because none of the City's economic development projects had been fruitful. A news reporter expressed the view that the suspension would likely be only temporary.

Kivalina

In June, DCED staff met with the Administrator for the City of Kivalina to discuss the municipal dissolution process and the effects such dissolution would have on Kivalina. The Administrator indicated to staff that her request for information was

based on an interest expressed by the Mayor of Kivalina to dissolve the City. Among the topics discussed, staff advised that Kivalina would lose its authority to levy taxes and that because Kivalina is part of an organized borough, Kivalina's ability to directly receive State Revenue Sharing and Safe Communities Program funding would be discontinued. LBC staff provided documentation to assist her in understanding the dissolution process.

In August, a member of the Kivalina City Council requested forms to petition for dissolution of the City of Kivalina. Kivalina is a second class city in the Northwest Arctic Borough. Staff from the Northwest Arctic Borough also contacted the Division Director and LBC staff regarding this matter. The City of

Kivalina held a public meeting regarding dissolution on September 2, 2003. Staff from the Northwest Arctic Borough were present to address matters relating to future delivery of services in Kivalina.

Mekoryuk

The DCED staff in Bethel is assisting officials for the City of Mekoryuk with information regarding city dissolution. LBC staff provided him with relevant materials and laws that

address the standards for dissolution. LBC staff is also revising the petition form for dissolution and will forward it to the Bethel DCED office once the form is updated.

Quinhagak

The Mayor of Quinhagak advised staff in DCED's Bethel regional office that some community residents have expressed interest in dissolving the City of Quinhagak. The Mayor was encouraged to have

those individuals contact the LBC staff for further information.

Ruby

The Tribal Chief of Ruby expressed interest in exploring dissolution of the City of Ruby.

City Reclassification

City reclassification activities occurred in the following localities during 2003:

- Angoon
- Dillingham

Angoon

The DCED staff spoke to a council member generally about reclassification of the city to first class status.



Dillingham

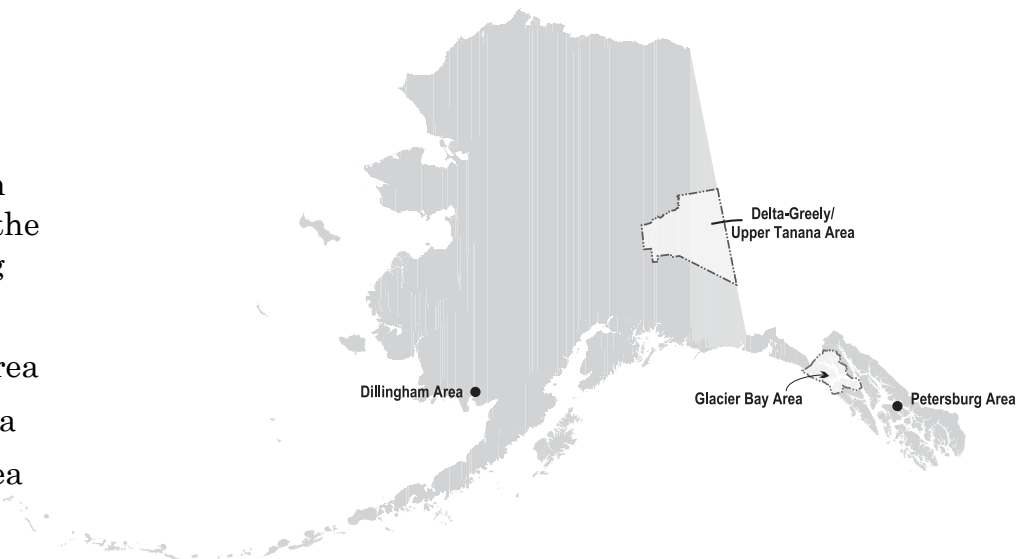
The City of Dillingham explored reclassification to second class city status. Such reclassification would result in the merger of the Dillingham City School district into the Southwest Region REAA. LBC staff

provided a consultant to the City with information that had been prepared for a presentation on the prospective reclassification of the City of Pelican (which is analogous to a prospective proposal for reclassification of the City of Dillingham).

Borough Incorporation

Borough incorporation activities occurred in the following areas during 2003:

- Delta-Greely Area
- Dillingham Area
- Glacier Bay Area
- Petersburg



Delta-Greely Borough

The City of Delta Junction is exploring four local government scenarios using funding from the National Missile Defense project. The scenarios are: (1) status quo, (2) expanding the boundaries of the existing second class City of Delta Junction; (3) reclassifying the City of Delta Junction

to a first class city and expanding its boundaries; or (4) forming an organized borough.

A Delta Greely Borough study was filed with the DCED staff in November 2003. One of the revenue sources contemplated for a prospective borough is a \$2/ounce severance tax on gold. If the Pogo mine is developed in that region, it is projected that it would

produce between 500,000 and 550,000 ounces of gold annually for 11 years.

Dillingham Area

A consultant to the City of Dillingham inquired about the prospects of forming an 'interim Dillingham-Aleknagik-Wood River-Tikchik watershed borough' with the understanding that such would ultimately

expand to include the entire area within the model borough boundaries. Staff expressed reservation that the LBC would support such an interim proposal. The City of Dillingham was encouraged to express the local sentiments on the matter to the LBC in writing.

Glacier Bay

The City of Hoonah undertook efforts to develop a petition for incorporation of a Glacier Bay area borough. LBC staff provided information about standards and procedures for borough incorporation.

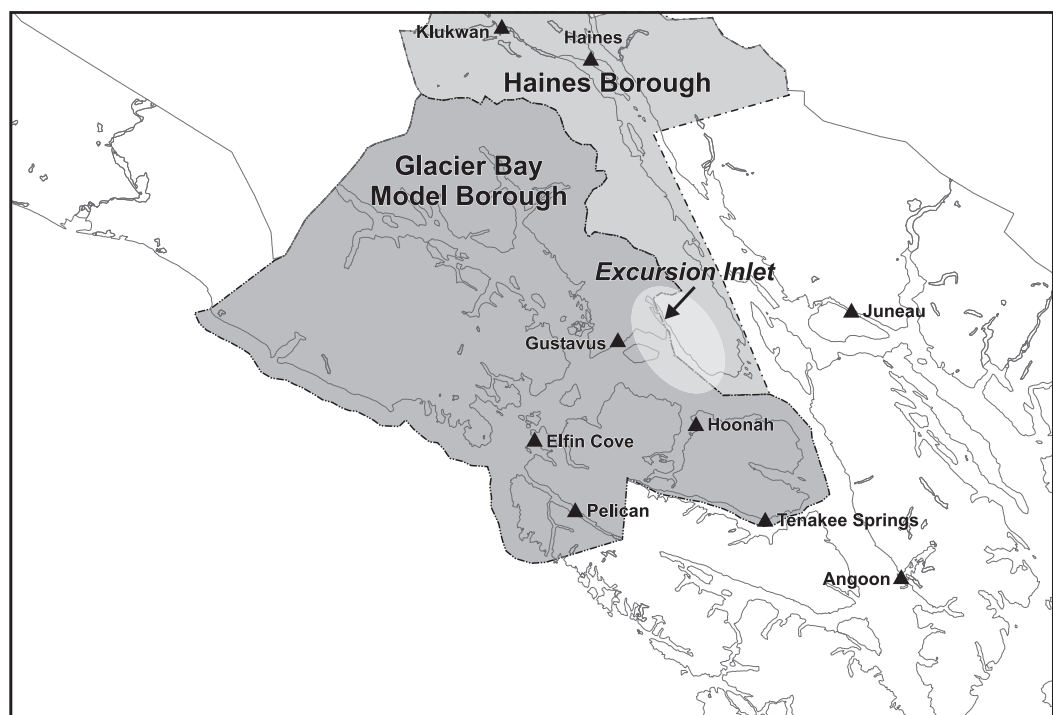
On April 18, 2003, LBC staff and the Division Director met with representatives of the City of Hoonah regarding its efforts to develop a petition to incorporate a borough. Hoonah officials envisioned the prospective borough proposal to follow the Glacier Bay Region Model Borough boundaries, with one significant excep-

tion. The exception is the addition of Excursion Inlet, which is currently within the boundaries of the Haines Borough. It was also noted that there was slight interest by some in considering the inclusion of White Sulfur Hot Springs (currently within the boundaries of the City and Borough of Sitka) and Funter Bay (currently within the model boundaries of the City and Borough of Juneau). However, those areas were not anticipated to be included in the proposal.

Excursion Inlet was annexed to the Haines Borough in 1975. The Hoonah officials were advised that

it is technically possible to petition for incorporation of a borough encompassing territory within the boundaries of an existing borough under 3 AAC 110.060(e). To be successful, however, such a proposal must meet borough incorporation standards for the entire area and borough detachment standards for the area within the boundaries of the existing borough. LBC staff indicated that Hoonah should anticipate intense opposition to any proposed detachment of Excursion Inlet from the Haines Borough. Hoonah officials were encouraged to make an accurate determination of the fiscal impacts that such a proposal would have

Glacier Bay Model Borough



on the viability of both the prospective Glacier Bay Borough and the existing Haines Borough. Moreover, Hoonah officials were strongly encouraged to confer with Haines Borough officials regarding the matter at the earliest opportunity and to keep them informed of developments in the matter.

Discussion also occurred concerning the nature of the prospective borough proposal. Interest was

initially expressed in forming a home rule borough. LBC staff summarized differences between home rule and general law. LBC staff stressed that preparation of a home rule charter is a complex and lengthy process. Hoonah officials were urged to consider the alternative of general law status with the understanding that, once established, the borough could adopt a home rule charter.

Petersburg

The City of Petersburg is considering the alternative of forming a borough government encompassing roughly the northern half of the territory within the Wrangell-Petersburg Model Borough boundaries.

Borough Annexation

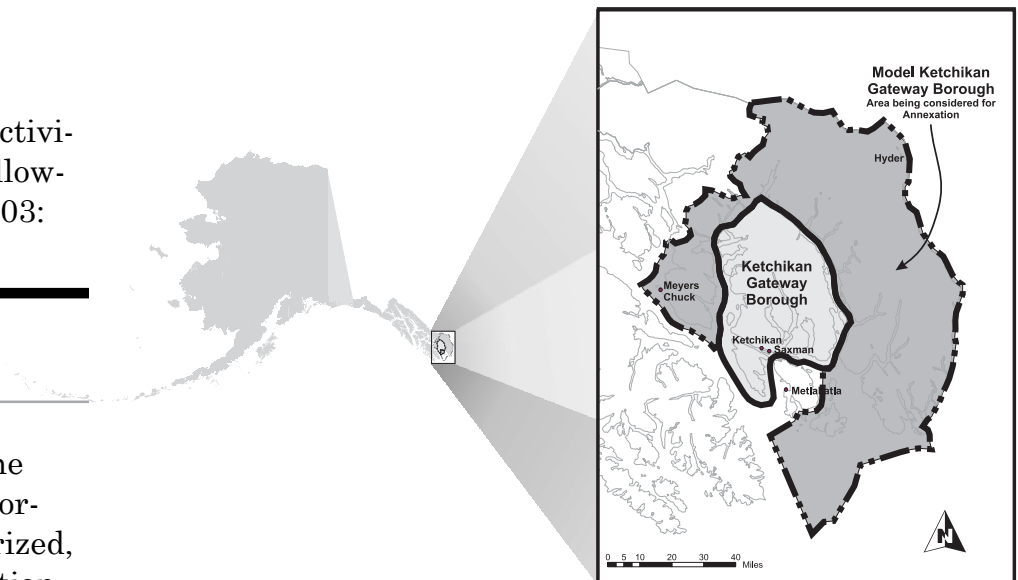
Borough annexation activities occurred in the following borough during 2003:

Ketchikan Gateway Borough

On October 6, 2003, the Ketchikan Gateway Borough Assembly authorized, by a vote of 4-3, a petition to the LBC for annexation of all territory within the Borough's model boundaries not already within the existing corporate boundaries of the Borough. The

area in question comprises an estimated 5,545 square miles, including Hyder and Meyers Chuck.

Borough officials indicate that the petition is currently under development.



Borough Detachment

Borough detachment activities occurred in the following communities during 2003:

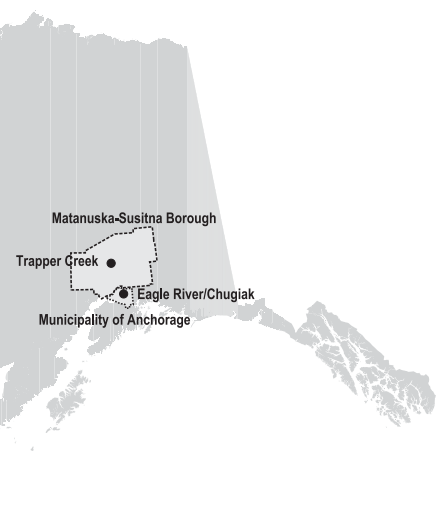
- ➡ Eagle River
- ➡ Trapper Creek

Eagle River

A legislator has requested information and forms regarding detachment of the Eagle River area from the Municipality of Anchorage. LBC staff is revising the detachment petition form and related material to send to the legislator. At this time, it appears that the detached area would be seeking either home-rule or first class borough or city incorporation.

There have also been articles in the Anchorage and Eagle River papers regarding the issue of detach-

ment. While the articles speak of “seceding” the area from the Municipality of Anchorage, the legal term for the action being sought is “detachment”. The only forms of municipal alterations authorized under statute are annexation, consolidation, detachment, dissolution, merger, name change, reclassification, and unification.



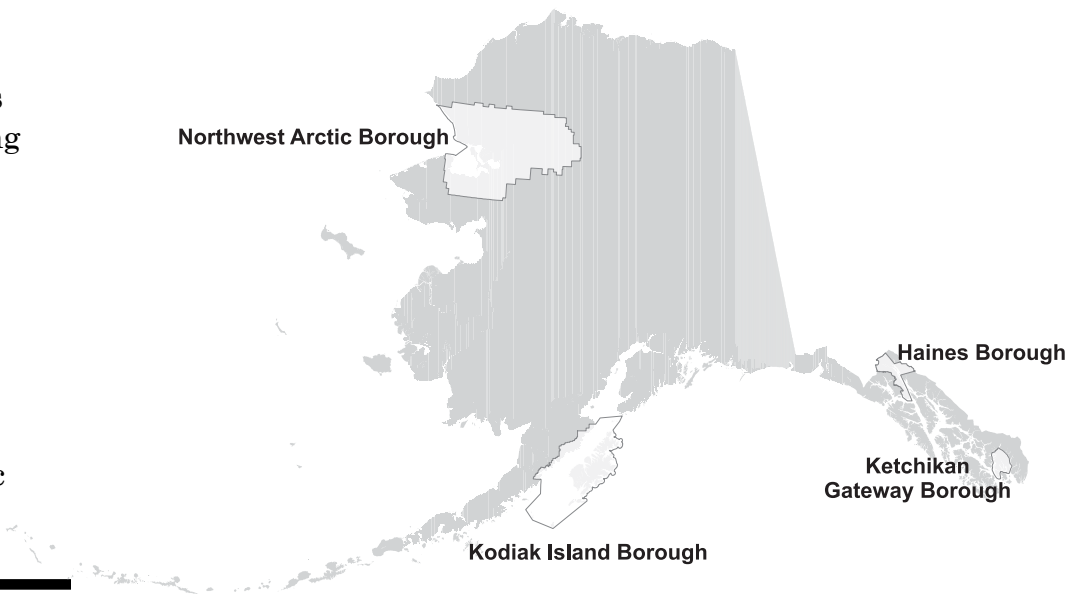
Trapper Creek

A resident of Trapper Creek asked for information about standards and procedures for detachment of the Trapper Creek area from the Matanuska-Susitna Borough. The inquiry was motivated by the prospect that the Matanuska-Susitna Borough is reportedly contemplating the closure of the Trapper Creek school because of low enrollment.

Consolidation

Consolidation activities occurred in the following localities during 2003:

- Haines Borough
- Ketchikan Gateway Borough
- Kodiak Island Borough
- Northwest Arctic Borough



Haines Borough

LBC staff provided a six-page letter to the Haines Borough responding to questions from the Borough Manager regarding the Haines Borough Charter and consolidation documents regarding transition measures. Particular attention was given to the issue of extending sales taxes areawide.

Ketchikan Gateway Borough

A group of citizens in Ketchikan, known as the “Ketchikan One Government Committee” – a subcommittee of the Greater Ketchikan Chamber of Commerce – developed an application for an initiative

petition to place the following question on the October 7, 2003, ballot:

Shall a commission be elected to prepare a petition, including a home rule charter, to consolidate the City of Ketchikan and the Ketchikan Gateway Borough and shall the Ketchikan Gateway Borough file the petition with the Local Boundary Commission by September 30, 2004?

LBC staff provided extensive information and materials to the group and local government officials regarding the matter. The Ketchikan Gateway Borough Clerk approved the application for an initiative petition

On August 13, the Ketchikan One Government Committee filed the initiative petition. The petition had been signed by nearly 900 individuals; 598 valid signatures were required for certification. On August 14, the Ketchikan Gateway Borough Clerk certified the petition.

On October 7, 2003, voters approved the initiative by a margin of 54.5 percent to 45.5 percent. On January 13, 2004, voters will elect seven members to serve on the consolidation commission. Three members will be elected from the area within the City of Ketchikan, three members will be elected from the part of the Ketchikan Gateway Borough outside the

boundaries of the City of Ketchikan, and one member will be elected from the Borough at large. The Commission must prepare a petition, including a home-rule charter, for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. The petition must be submitted to the Local Boundary Commission before September 30, 2004.

Kodiak Island Borough

A citizen of Kodiak is actively pursuing the prospect of a voters' initiative for consolidation of the City of Kodiak and the Kodiak Island Borough. LBC staff provided extensive information and materials to the individual.

Northwest Arctic Borough

A local official expressed interest in consolidating the Northwest Arctic Borough with all of the city governments within the Borough (with the possible exception of the City of Kotzebue).

Special Projects

In 2003, the Local Boundary Commission carried out two significant special projects. Those involved:

- review of the unorganized borough
- study of school consolidation opportunities

Review of the Unorganized Borough

Chapter 53, SLA 2002 directed the Local Boundary Commission to report to the First Regular Session of the Twenty-Third Alaska State Legislature which areas of the unorganized borough meet borough incorporation standards.

The Commission began its review of the unorganized borough shortly after Chapter 53, SLA 2002 took effect on September 17, 2002.

The Commission met six times concerning the unorganized borough review: October 22, November 13, and December 9, 2002; January 17, February 8, and February 11, 2003. During the February 8, 2003, meeting, the Commission held a statewide hearing on the matter and received testimony from residents of twenty-seven

communities. Extensive written comments were also submitted to the Commission.

The Commission submitted its report to the Legislature on February 19, 2003.⁷

Chapter 1, consisting of 34 pages, addressed fundamental public policy issues relating to borough incorporation. Chapter 2, comprising 56 pages, provided details about the borough incorporation standards established in the Constitution of the State of Alaska, Alaska Statutes, and Alaska Administrative Code. Those standards relate generally to four broad areas: (1) economic capacity; (2) population size and stability; (3) regional commonalities; and (4) broad public interest. Chapter 3 of the report provided 126 pages of analysis that applied the borough incorporation standards to areas of the unorganized borough.

The Commission concluded that seven unorganized areas meet the standards for borough incorporation.

⁷ *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, Local Boundary Commission, February 2003 (hereafter "2003 Unorganized Borough Report").

Those areas are the Aleutians West Model Borough; Chatham Model Borough; Copper River Basin Model Borough; Glacier Bay Model Borough; Prince William Sound Model Borough; Upper Tanana Basin Model Borough; and Wrangell-Petersburg Model Borough.

The Commission also carefully considered one additional area – the Prince of Wales Island region. However, the Commission declined to render a finding as to whether the Prince of Wales Model Borough has the human and financial resources to support borough government.⁸

Study of School Consolidation Opportunities

The 2003 Alaska Legislature directed the Local Boundary Commission and the Department of Education and Early Develop-

ment (“Department” or “DEED”) to address matters relating to school consolidation. Specifically, the legislative directive, which appears on page 10, Section 1, Chapter 83, SLA 2003, provides as follows:

It is the intent of the legislature that (1) the . . . Commission identify opportunities for consolidation of schools, with emphasis on school districts with fewer than 250 students, through borough incorporation, borough annexation, and other boundary changes; (2) the . . . Commission work with the Department . . . to fully examine the public policy advantages of prospective consolidations identified by the . . . Commission, including projected cost savings and potential improvements in educational services made possible through greater economies of scale; and (3) the . . . Commission with the Department . . . report their findings to the legislature no later than the 30th day of the Second Session of the 23rd Legislature.

A working draft report on consolidation was completed on November 26, 2003, and reviewed by the Commission at its public meeting of December 17, 2003. The purpose of the meeting was to (1) review the November 26 working draft report on school consolidation prepared by LBC

staff; (2) address plans for the final report; (3) discuss plans for future meetings and hearings regarding school consolidation; and (4) deal with other matters relating to the topic.

At the meeting, the DEED took the position that its role in the study effort would be limited to providing financial analysis of consolidation proposals only after the LBC or others have identified specific opportunities for school consolidation. The Commission concluded that work on the school consolidation study could not proceed without critical input from the DEED.

The Commissioners asked the LBC Chair to confer with the Commissioner of DEED to determine what information it would be providing. The legislative directive called for the study to be completed by February 10, 2004.

⁸ There are two resolutions pending in the Legislature that would require the Local Boundary Commission to consider specific proposals for the establishment of organized boroughs in specific areas listed in the resolutions. Those resolutions are Senate Concurrent Resolutions 12 and 17.

Litigation Involving the Local Boundary Commission

Skagway Borough Incorporation

On November 27, 2002, the Petitioner for incorporation of the Skagway Borough filed an appeal of the Commission's decision in Superior Court in Juneau. Five points are designated on the appeal. The case (Case No. 1 JU-02-0124 CI) is currently pending.

Homer Annexation

Annexation of 4.58 square miles to the City of Homer pursuant to Article X, Section 12 of the Constitution of the State of Alaska became effective on March 20, 2002. The Commission's decision in the matter was appealed to Superior Court by Kachemak Area Coalition, Inc. d/b/a/ Citizens Concerned about Annexation, and Alaskans Opposed to Annexation, and Abigail Fuller (Consolidated Case No. 3AN-02-4626 CI).

On December 4, 2003, the superior court affirmed the Commission's action with

respect to four of five fundamental points on appeal. However, the court found that the LBC erred when it did not discuss the impact annexation would have on a borough service area that was partially annexed to the City of Homer. The court has ordered a remand to the LBC to discuss the impact of annexation on that service area. On December 15, 2003, the LBC requested reconsideration of the court's decision. The court issued an order on December 23, 2003, denying the Commission's request for reconsideration.

Assessment of the Work and Effectiveness of the Local Boundary Commission

At the direction of Governor Murkowski, DCED prepared an assessment of the work and effectiveness of the LBC. The DCED issued its report of that assessment on August 1, 2003. The full assessment was 16 pages and addressed the following topics:

- purpose of the assessment;
- relationship between the LBC and DCED;

- constitutional origins of the LBC and Alaska's local government agency;
- duties and functions of the LBC;
- LBC membership;
- laws relating to LBC;
- areas of controversy;
- successes of the LBC in 2002;
- pending activities of the LBC;
- resources needed to support the LBC;
- recommendations for change; and
- conclusion.

The assessment concluded that:

1. the LBC and its staff perform a critical role with respect to the establishment and alteration of municipal governments in Alaska;
2. they exhibit expertise and proficiency in carrying out their respective duties; and
3. the LBC operates efficiently and effectively, most particularly in view of the fact that it is not a full-time agency and its members must put their full-time jobs on hold while considering and acting on LBC business.

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CHAPTER 3 POLICY ISSUES AND CONCERNS

CSSB 63(STA) “An Act relating to transition provisions related to municipal mergers, consolidations, dissolutions, reclassifications, annexations, detachments, and incorporations; and relating to municipal property taxation in annexed, detached, and newly incorporated areas.”

The fundamental purpose of CSSB 63(STA) is to eliminate long-standing ambiguities in existing law regarding when newly incorporated, annexed, and detached properties are subject to municipal property taxes. Sections 3 and 5 of the bill accomplish that fundamental purpose.

To ensure that the provisions of Sections 3 and 5 not be construed as limitations on the discretion of the Local Boundary Commission to determine appropriate transition measures for municipal incorporation, annexation, and detachment, Sections 2, 4, and 5 were added. In view of those additions and to maintain existing substantial uniformity in State law regarding all decision-making actions of the Commission, language paralleling the provisions of Sections 2, 4, and 5 were added to other matters under the jurisdiction of the Commission (i.e., city reclassifications, municip-

pal merger, consolidation, and dissolution). Those additions were set out in Sections 1, 6, and 7 of the bill.

On May 5, 2003, CSSB 63(STA) passed the State Senate by a unanimous vote of all members present (18 voted in favor of the bill, one Senator was excused and one Senator was absent). The Local Boundary Commission supported the bill, which is currently before the House of Representatives for review.

In December 2003, Representative Paul Seaton requested that the Commission support the bill without the language relating to transition provisions. He observed that the Commission already has the power to amend petitions and impose transition requirements for boundary changes. He stated that while codifying those powers in statute would create additional clarity, removing the provisions from the bill would not diminish the Commission's ability to effect reasonable boundary changes. He is of the opinion that the transitional language in the bill may jeopardize its passage. Therefore, he requested that the Commission support a change in title of the bill and removal of the language referring to transition provisions and powers of the Commission. He concluded that this compromise could enable passage of a final resolution of the municipal property tax issue.

The Commission concurs with the conclusions and recommendations made by Representative Seaton and encourages amendment and passage of the bill as it relates to municipal property taxation in annexed, detached, and newly incorporated areas; i.e., the provisions in Section 3 and 5 of the bill.

HB 38 “An Act relating to mergers and consolidations of municipalities.”

This bill alters existing laws governing merger and consolidation of municipal governments (cities and boroughs). Its provisions are identical to those passed by the Legislature in 2002 as SCS CSHB 296(JUD). That bill was opposed by the DCED and LBC and vetoed by the Governor.

Section 1 of the bill imposes a requirement that signatures on a voter-initiated local option petition for merger or consolidation of municipal governments must be gathered within a 365-day period. Currently, there is no time limit on the gathering of signatures.

Section 2 adds a new subsection to AS 29.06.100 dealing with a local option petition for merger or consolidation of a borough and more than one city within that borough. It requires the petition to propose one of two results if it is approved by voters in the borough area outside the cities proposed to be merged or consolidated but is not approved by voters in each of the cities. The two options are: (1) the entire proposal is defeated, or (2) the proposal is partially approved and the borough is merged or consolidated with the cities in which the proposal has been approved.

Section 3 amends existing law. It requires that a majority of the votes in each of the municipalities proposed to be merged or consolidated through the local option process must favor merger or consolidation in order for it to be approved.

Votes on a proposal to merge or consolidate a borough and one or more cities within that borough must be tabulated as follows:

1. in the borough area outside of each city in that borough proposed to be merged or consolidated, and
2. in each of the cities in the borough proposed to be merged or consolidated.

If one or more municipalities outside of the borough are also included within the proposal, in each of those other municipalities a separate tabulation must be made for that area.

The bill provides that the proposal is defeated if it is not separately approved in the borough outside of the cities in that borough that are proposed to be merged or consolidated. If municipalities outside of the borough are included in the proposal, it is also rejected if not approved in those other municipalities.

If the proposal is not approved in one or more of the cities within the borough that are proposed to be merged or consolidated but is otherwise approved in each of the areas separately tabulated, the proposal is either entirely defeated or partially approved as specified in the petition under the new provision set out in Section 2.

Lastly, Section 3 states that the provisions in the amended law are intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).

Section 4 provides that the provisions in Section 2 do not apply to a merger or consolidation petition filed with DCED before the effective date of the Act. The bill also provides that the provisions in Section 3 do not apply to an election held as a result of a petition filed with DCED prior to the effective date of the Act.

Inasmuch as this HB 38 is identical to SCS CSHB296(JUD), the analysis made by the Commission in 2002 to recommend veto of that bill is apposite here:

The Local Boundary Commission strongly opposes HB 296 and respectfully requests that you veto the bill passed by the legislature. HB 296 would change the long-established vote count process by which a local option consolidation or merger of municipal governments is decided.

For thirty years, State law has provided that local option consolidation or merger proposals were subject to approval by a simple majority of the aggregate vote in the areas proposed for consolidation or merger. HB 296 would require separate approvals by voters in each municipality to be merged or consolidated. Moreover, in the case of a proposed merger or consolidation of a borough and a city within that borough, the proposal would be subject to approval by voters in each city to be consolidated or merged, and by a majority of voters in the remainder of the borough.

This change in how votes are counted repudiates the principles of representative government – *one person - one vote*, a single vote count, and majority rule. In their place, HB 296 institutionalizes principles of unrepresentative government – weighted votes, multiple vote counts, and minority veto. In effect, HB 296 would:

- create separate voting districts for each municipality and, in the case of a city-borough action create separate districts in each affected city and for the non-city area;

“This change in how votes are counted repudiates the principles of representative government – *one person - one vote*, a single vote count, and majority rule.” *Local Boundary Commission, 2002*

- grant each voting district, no matter how large or small in population, one vote – for or against – a consolidation or merger proposal;
- weight votes of residents of small districts more heavily than votes of residents of populous districts;
- require separate approval by all districts, regardless of the overall vote, to implement a complete proposal;
- grant borough residents living outside cities veto power over borough consolidation or merger proposals; and
- disregard the will of the majority about their preferred form of local government.

This proposed change constitutes a major departure from constitutional principles and from long-established legislative policy.

The Local Boundary Commission is also concerned over apparent contradictory elements in the bill. The last sentence of Section 3 . . . states that the provisions of the bill are “intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).”

However, there is nothing in AS 29.06.040(c)(1) that provides for *de facto* voting districts. Indeed, the statute provides for the exact opposite – approval of a local option annexation by a simple majority of the votes in the affected area.

Article X, Section 1 of Alaska’s constitution provides for “a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.” The effect of HB 296 would be to perpetuate duplication of government units and tax-levying jurisdictions, regardless of the will of the majority of local voters.

For 30 years, legislative policy has allowed consolidation or merger proposals to be decided by a majority vote of affected residents. That policy is in harmony with constitutional principles to encourage efficiency and fiscal accountability in local government. The proposed amendments would reverse this legislative policy.⁹

Although HB 38 has not been set for meeting or hearing to date, the Commission wishes to be on record that it opposes the bill for the same reasons it opposed SCS CSHB 296(JUD) in 2002; i.e., it is counter to the Constitutional principles of minimizing local government units and tax levying jurisdictions and repudiates the principles of representative government.

HB 363 “An Act relating to mergers and consolidations of municipalities.”

Except for minor wordsmithing changes, HB 363 is identical to HB 38, and, thus, to SCS CSHB 296(JUD), *supra*, and is opposed by the Commission.

Disincentives for Borough Incorporation and Annexation

Impediments to Development of Local Government in Alaska

Since the 1980s, the Local Boundary Commission has urged the Legislature to examine and address the substantial disincentives for borough incorporation and annexation. The Legislature and the Commission have complementary duties relating to that issue. Specifically, the Legislature has the constitutional duty to prescribe procedures and standards for borough formation (see Article X, Section 3 of the Constitution of the State of Alaska).

The Commission has the statutory duty to make studies of local government boundary problems (*see* AS 44.-33.812(a)(1)).

Alaska’s Constitution encourages the creation of organized boroughs.¹⁰ The authors of Alaska’s Constitution envisioned that organized boroughs would be established wherever citizens were ready for and capable of assuming the responsibilities of local government. According to Constitutional Convention Delegate Vic Fischer:¹¹

[T]he convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The [Local Government] committee had previously decided that although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where ‘it should take on the burden of its own government.’¹² Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue in a referendum,¹³ and that the state would offer adequate inducement to local people to accept organized borough status and to initiate incorporation.¹⁴

⁹ LBC letter dated May 28, 2002, to Governor Tony Knowles.

¹⁰ *See, Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

¹¹ Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, p. 39 (1971).

¹² *Alaska Constitutional Convention Proceedings*, Alaska State Legislature, Alaska Legislative Council, pp. 2673-74, November 1963.

¹³ *Ibid.*, pp. 2674-76.

¹⁴ *Ibid.*, pp. 2650-51.

The founders recognized that the Legislature would have divergent alternatives available to carry out its constitutional duty to prescribe methods for borough formation.

As noted above, delegates preferred a voluntary, rather than compulsory, approach to borough incorporation. However, they also recognized that, to be successful, a voluntary approach must be coupled with adequate inducements to establish boroughs. Constitutional Convention Delegate Maynard D. Londborg reflected such in his comments to the Convention:

We felt that it could be handled in different ways, but I will mention two: one is to have some state agency that would survey the whole thing and say now is the time you have to incorporate; there is no way you can get out of it; you have to organize. I believe the method that Mr. Rivers brought out would be the more desirable, by having skilled men that would study this matter and set it up so that it would come in the form of an inducement so that they can see that they are going to benefit, definitely benefit by organizing, by getting into the picture of local government.¹⁵

In 1961, the legislature enacted the initial laws implementing procedures for the formation of organized boroughs. With minor exceptions, those laws remain in place today. The 1961 Legislature opted to try the voluntary approach to borough formation.

However, inducements to organize were lacking. Legislators recognized from the very beginning that adequate incentives had not been provided to encourage people to form boroughs. Jay Hammond, who was a member of the State House of Representatives when the Borough Act of 1961 was adopted, characterized the matter as follows:¹⁶

Attractive enough on paper, in practice, the organized borough concept had little appeal to most communities. After all, why should they tax themselves to pay for services received from the state, gratis?

Constitutional Convention Delegate Victor Fischer and Thomas Morehouse portrayed the Borough Act of 1961 as follows:¹⁷

[T]he 1961 Borough Act was predicated on the assumption that local desire to establish borough government would supply the force toward incorporation, despite the findings of previous Boundary Commission hearings that there was little enthusiasm in the state for the unknown and untried form of local government. There were also pockets of intense local opposition, particularly in areas outside independent school districts.



*Constitutional Convention Delegate
Victor Fischer*

¹⁵ *Ibid.*, p. 2651.

¹⁶ Jay Hammond, *Tales of Alaska's Bush Rat Governor*, Epicenter Press, Fairbanks, AK, 1994, p. 149.

¹⁷ *Borough Government in Alaska*, p. 73.

By the end of the fourth year of statehood, only one undersized organized borough had formed. It encompassed only about 600 residents. A number of officials were critical that Alaska's only organized borough was a drastic departure from the regional concept envisioned by the Constitutional Convention Delegates. Each of the nine regions of the state that had created independent school districts – legal under Territorial law, but not recognized under Alaska's Constitution – clung to those single purpose governmental units.

When the 1963 Legislature convened, Representative John Rader took the position that the lack of progress toward borough formation was the “greatest unresolved political problem of the State.”¹⁸

My experience as the Anchorage City Attorney and the State Attorney General led me to believe that the greatest unresolved political problem of the State was the matter of boroughs. As near as I could see, no reasonable solutions were being propounded. A great opportunity to create something of value could be lost. A state of the size, population density, and distribution of Alaska makes State administration of local problems impossible. Anyone who had ever worked in Alaska on the local level or on the State level could see the frustrations of honest attempts repeatedly failing because of the simple fact that there was no governmental structure upon which to hand necessary governmental functions. I therefore decided to do what I could.

To address the pressing issue, Representative Rader drafted and introduced a bill that mandated incorporation of boroughs in all areas of Alaska that had independent school districts. Nine areas were named in the legislation. Those consisted of Ketchikan, Sitka, Juneau, Kodiak Island, Kenai Peninsula, Anchorage, Matanuska-Susitna valleys, Lynn Canal – Icy Straits Election District, and Fairbanks.¹⁹ In promoting his bill, Representative Rader stressed:²⁰



Alaska State Representative John Rader, author of the 1964 Mandatory Borough Act

We must make local government and, in this instance, boroughs, financially desirable and generally give communities additional incentives to govern themselves. Apparently, the desire for self-government as a principle has not been strong enough in most areas of the state to cause the incorporation of boroughs under the present law. Too frequently, Alaskans have found that when they form a local unit of government (either a city, public utility district or school district) that they continue to pay the same amount of state taxes and also pay local taxes to provide services which the state previously supplied free of charge. Not only is there little incentive for

¹⁸ John L. Rader, “Legislative History,” in Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska, A Study of Borough Government*, Frederick A. Praeger, Publishers, New York, 1968, p. 93.

¹⁹ The bill was ultimately amended to exclude the Haines-Skagway area from the mandate to incorporate a borough.

²⁰ Ronald C. Cease, *Areawide Local Government in the State of Alaska: the Genesis, Establishment, and Organization of Borough Government*, [Claremont, CA] 1964, pp. 71-72.

local government under these conditions, but there is an actual penalty placed upon the citizens who assume responsibility for local problems by organizing local government.²¹

The legislation was amended during deliberations to remove the Haines-Skagway region from the bill. Following the amendment, the bill narrowly passed and was signed into law by Democratic Governor William A. Egan.

An agreement had reportedly been reached among legislators during the First Session of the Third Alaska Legislature prior to approval of the 1963 Mandatory Borough Act that additional boroughs would later be mandated by the legislature.²² However, neither the Second Session of the Third Alaska State Legislature nor any other subsequent legislature has mandated additional boroughs. While neither the Borough Act of 1961 nor the 1963 Mandatory Borough Act provided adequate incentives to form boroughs voluntarily, the 1963 Mandatory Borough Act did promise that organized boroughs would not be penalized because of incorporation. Specifically, Section 1 of Chapter 52, SLA 1963 provided as follows:

Declaration of Intent. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. *No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation.* (Emphasis added.)

Notwithstanding the promise of equity in the 1963 Mandatory Borough Act, organized boroughs are *severely* penalized with respect to certain State financial aid. Consider, for example, public education.

Organized boroughs are mandated by State law (AS 29.35.160) to carry out, within their boundaries, the duties of the State of Alaska under Article VII, Section 1 of the Constitution for public education. Moreover, organized boroughs are mandated by State law (AS 14.17.410) to pay a significant portion of the State's cost of education in the form of a "local contribution."

The local contribution required of organized boroughs is deducted from the level of State education foundation funding that would otherwise be paid to the district. For fiscal year (FY) 2003, organized boroughs received \$152.5 million less in State educational foundation aid than they would have received had they not been organized as boroughs.²³ Thus, contrary to the express intent of the 1963 Mandatory Borough Act,

²¹ *Ibid.*, p. 47.

²² Personal communication with Clem Tillion, member of the House of Representatives in the Third Alaska Legislature, April 28, 2000.

²³ Home rule and first class cities in the unorganized borough are subject to the same laws requiring a local contribution in support of schools. They may also make voluntary local contributions under AS 14.17.410(c). However, the remainder of the unorganized borough, made up of regional educational attendance areas (REAs), which comprises approximately two-thirds of the population of the unorganized borough, has no obligation to make a local contribution. As such, REAs suffer no reduction in the level of State education foundation aid, as is the case for municipal school districts. In fact, the single purpose REAs in Southeast Alaska receive National Forest Receipts funding which boosts their level of financial aid well beyond the basic need determination made under the education foundation formula.

organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation.

In addition to the \$152.5 million in required “local contributions” for FY 2003, the 16 organized boroughs made “voluntary local contributions” of \$127,172,543 or \$1,201 per student last year.²⁴ The total contributions in support of schools by organized boroughs last year amounted to \$279,703,457 or \$2,642 per student. The data in Table 3-1 on the following page sets out school districts, by type, and the required and voluntary local contribution of each under the education foundation program in AS 14.17.410.

Attempts by boroughs to achieve a judicial remedy of perceived tax inequities inherent in the education funding formula have been unsuccessful. In one recent case, the court concluded that freedom from disparate taxation lies at the low end of the continuum of interests protected by the equal protection clause.²⁵ Justices Matthews and Rabinowitz stated that any remedy of the perceived inequities must be pursued through the legislature rather than the courts.

[T]he legislature can decide whether and how much to tax property in REAAs free from legally maintainable claims brought by taxpayers in other taxing jurisdictions that its decision is wrong. Here, as with State spending decisions, any available remedy must be pursued through majoritarian processes rather than through the courts.²⁶

A summary of the disincentives for borough incorporation and annexation that exist in the current law follows:

- Areas of the unorganized borough outside of home rule and first class cities have no obligation to

financially support operation of their schools. Borough formation results in the imposition in those areas of the requirement for local contributions in support of schools (4 mill equivalent or 45 percent of basic need, whichever is less).

- Borough formation would bring about consolidation of school districts in the unorganized borough, an effect that is commonly perceived as a loss of local control regarding schools. Under the present circumstance, the delivery of education services in the unorganized borough is fractionalized. Although the unorganized borough accounts for approximately 13 percent of the state’s population, the unorganized borough encompasses 70 percent of Alaska’s school districts.
- In some cases, borough formation carries the prospect of substantial education funding reductions in the form of eliminated supplementary funding floors under AS 14.17.490, reduced area cost differentials, and other factors.
- Borough formation or annexation would mean the loss of eligibility on the part of REAAs and cities in the unorganized borough for National Forest Receipts. Funds would be received by the new borough.

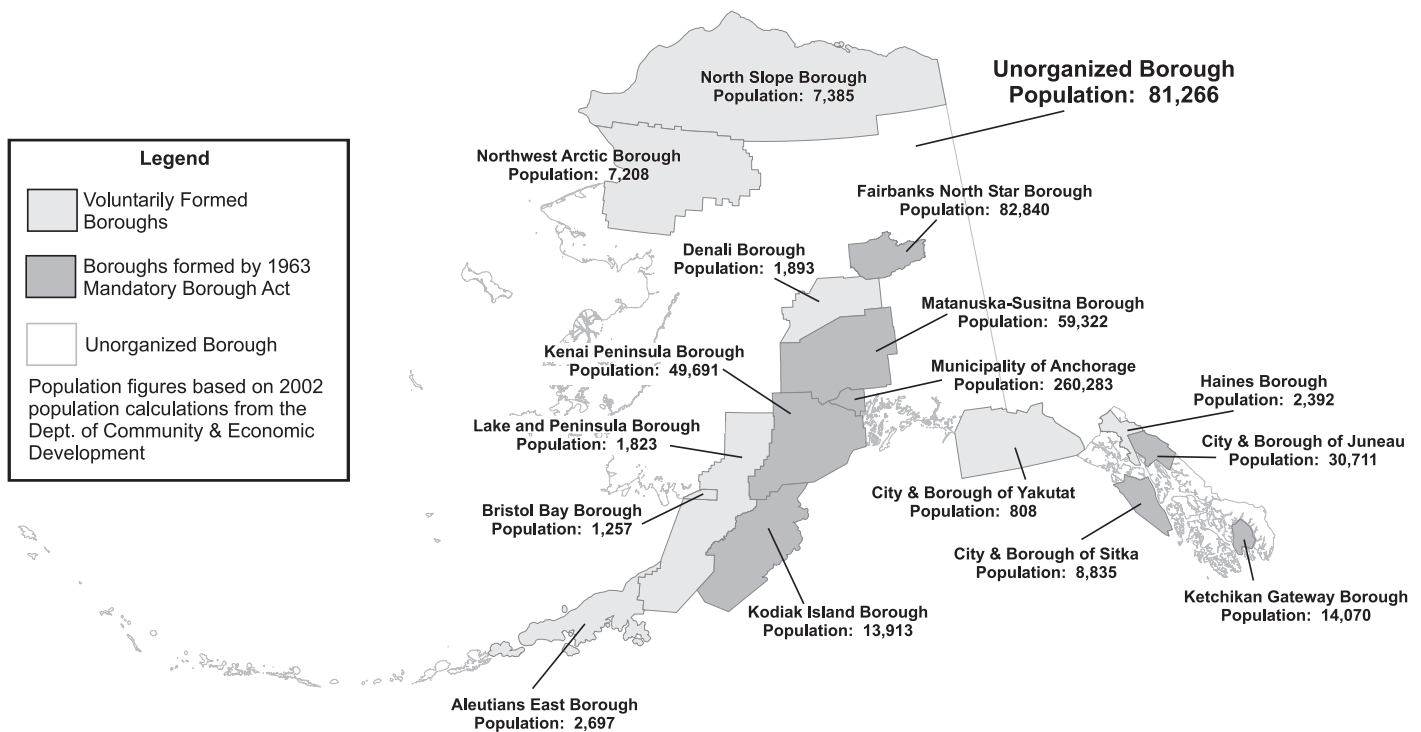
²⁴ Using a borough FY 2003 average daily membership of 105,884.5.

²⁵ *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391, 398 (Alaska 1997).

²⁶ *Ibid.*, 406.

Table 3-1

ALASKA DEPARTMENT OF EDUCATION FY2003 FOUNDATION PROGRAM - AS 14.17.410				
School District	District Type	Required Local Contribution	Voluntary Local Contribution (AS 14.17.410(c))	Total Local Contribution
Borough School Districts				
Aleutians East	Borough	\$374,238.00	\$445,762.00	\$820,000.00
Anchorage	Borough	\$67,845,314.00	\$46,527,893.00	\$114,373,207.00
Bristol Bay	Borough	\$819,671.00	\$273,345.00	\$1,093,016.00
Denali	Borough	\$551,645.00	\$669,211.00	\$1,220,856.00
Fairbanks	Borough	\$19,469,081.00	\$14,076,619.00	\$33,545,700.00
Haines	Borough	\$829,644.00	\$551,554.00	\$1,381,198.00
Juneau	Borough	\$10,678,758.00	\$7,052,442.00	\$17,731,200.00
Kenai	Borough	\$17,159,251.00	\$13,495,048.00	\$30,654,299.00
Ketchikan	Borough	\$4,514,932.00	\$2,762,837.00	\$7,277,769.00
Kodiak	Borough	\$3,829,029.00	\$3,599,581.00	\$7,428,610.00
Lake And Peninsula	Borough	\$278,976.00	\$775,624.00	\$1,054,600.00
Mat-Su	Borough	\$12,897,405.00	\$17,334,255.00	\$30,231,660.00
North Slope	Borough	\$8,947,234.00	\$15,544,734.00	\$24,491,968.00
Northwest Arctic	Borough	\$1,524,744.00	\$1,690,749.00	\$3,215,493.00
Sitka	Borough	\$2,628,220.00	\$2,103,661.00	\$4,731,881.00
Yakutat	Borough	\$182,772.00	\$269,228.00	\$452,000.00
BOROUGH TOTALS		\$152,530,914.00	\$127,172,543.00	\$279,703,457.00
City School Districts				
Cordova	City	\$695,496.00	\$558,504.00	\$1,254,000.00
Craig	City	\$413,421.00	\$633,182.00	\$1,046,603.00
Dillingham	City	\$611,160.00	\$388,840.00	\$1,000,000.00
Galena	City	\$71,954.00	\$868,776.00	\$940,730.00
Hoonah	City	\$125,616.00	\$333,784.00	\$459,400.00
Hydaburg	City	\$33,386.00	\$136,382.00	\$169,768.00
Kake	City	\$71,262.00	\$78,738.00	\$150,000.00
Klawock	City	\$128,048.00	\$9,952.00	\$138,000.00
Nenana	City	\$70,372.00	\$0.00	\$70,372.00
Nome	City	\$799,708.00	\$420,004.00	\$1,219,712.00
Pelican	City	\$48,089.00	\$900.00	\$48,989.00
Petersburg	City	\$1,005,246.00	\$970,730.00	\$1,975,976.00
Skagway	City	\$498,222.00	\$370,336.00	\$868,558.00
St. Mary's	City	\$18,446.00	\$0.00	\$18,446.00
Tanana	City	\$22,840.00	\$51,308.00	\$74,148.00
Unalaska	City	\$1,385,586.00	\$790,379.00	\$2,175,965.00
Valdez	City	\$2,664,019.00	\$1,937,295.00	\$4,601,314.00
Wrangell	City	\$629,136.00	\$175,216.00	\$804,352.00
CITY TOTALS		\$9,292,007.00	\$7,724,326.00	\$17,016,333.00
REAA School Districts				
Aleutian Region	REAA	\$0.00	\$0.00	\$0.00
Pribilof	REAA	\$0.00	\$0.00	\$0.00
Chugach	REAA	\$0.00	\$0.00	\$0.00
Chatham	REAA	\$0.00	\$0.00	\$0.00
Southeast Island	REAA	\$0.00	\$0.00	\$0.00
Yukon Flats	REAA	\$0.00	\$0.00	\$0.00
Annette Island	REAA	\$0.00	\$0.00	\$0.00
Kashunamiut	REAA	\$0.00	\$0.00	\$0.00
Kuspuk	REAA	\$0.00	\$0.00	\$0.00
Yupit	REAA	\$0.00	\$0.00	\$0.00
Alaska Gateway	REAA	\$0.00	\$0.00	\$0.00
Yukon/Koyukuk	REAA	\$0.00	\$0.00	\$0.00
Iditarod Area	REAA	\$0.00	\$0.00	\$0.00
Copper River	REAA	\$0.00	\$0.00	\$0.00
Southwest Region	REAA	\$0.00	\$0.00	\$0.00
Delta/Greely	REAA	\$0.00	\$0.00	\$0.00
Bering Strait	REAA	\$0.00	\$0.00	\$0.00
Lower Yukon	REAA	\$0.00	\$0.00	\$0.00
Lower Kuskokwim	REAA	\$0.00	\$0.00	\$0.00
REAA TOTALS		\$0.00	\$0.00	\$0.00
FY2003 GRAND TOTAL		\$161,822,921.00	\$134,896,869.00	\$296,719,790.00



- The extension of borough government would result in the loss of eligibility on the part of cities for federal payments in lieu of taxes (PL 94-565, as amended by PL 104-333). Funds would be paid to the borough.
- Borough formation or annexation would mean a 50 percent reduction of the entitlement of cities within the unorganized borough to fisheries business tax refunds from the State.
- The extension of borough government requires areawide planning, platting, and land use regulation. Such is commonly perceived by cities currently exercising those powers as a loss of local control (although boroughs may delegate the powers to cities within the borough).

- In some cases, borough formation carries with it the prospect of significant funding reductions from the State for coastal zone management.

Perhaps no statistic is more illustrative of the effect of the disincentives for borough government than the fact that only 4 percent of Alaskans live in boroughs that were formed voluntarily.²⁷ In contrast, 83 percent of Alaskans live in organized boroughs that were formed under the 1963 mandate from the Legislature. The remaining 13 percent of Alaskans live in the unorganized borough.

²⁷ Boroughs that have formed voluntarily typically enjoy abundant natural resources or other attributes that make borough government particularly attractive for those regions. Many of the eight boroughs formed under the 1963 Mandatory Borough Act lack comparable resources. The eight boroughs that formed voluntarily are the Bristol Bay Borough, Haines Borough, North Slope Borough, Northwest Arctic Borough, Aleutians East Borough, Lake and Peninsula Borough, Denali Borough, and Yakutat Borough.

It is noteworthy that the Alaska Municipal League shares the Commission's concerns. In a 2002 Policy Statement, the Alaska Municipal League states:

Encouragement of Municipal Government in the Unorganized Borough: The League supports state policies that remove disincentives and encourage the formation and annexation to boroughs in the unorganized areas of the state

Call for a Review of the Role of Government. The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating 'maximum local self-government with a minimum of local government units. . . .' According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments.

It is also noteworthy that, the City of Cordova, the seventh most populous city in the unorganized borough, has advocated for borough reform. In December 1999, the Council of the City of Cordova adopted Resolution Number 1299-83 urging "*the executive and legislative branches of the government of the State of Alaska to review and amend the borough formation process.*" Cordova, where officials of the seventh most populous city government in the unorganized borough, called for reform similar to SB 48. Cordova City officials drafted a paper outlining a concept to promote borough formation in those parts of the unorganized borough that have the capacity to assume the responsibility for local government.

In 2001, the Commission developed a proposal to address impediments to borough government incorporation and annexation for consideration by the Legislature. That

"The League calls for a review of municipal government . . . to determine if state policies are consistent with the intent of the Alaska Constitution mandating 'maximum local self-government with a minimum of local government units. . . .' " *Alaska Municipal League Policy Statement*

proposal was introduced as Senate Bill 48. The legislation passed the Senate in modified form (*CSSB 48(FIN) am*) but died in the Community and Regional Affairs Committee in the House of Representatives.

The Commission believes that a carefully designed process must be created to promote borough incorporation and annexation in those areas of Alaska that have the human and financial resources to support fundamental local governmental operations. As discussed in Chapter 2, in 2003 the Commission completed the unorganized borough study²⁸ mandated by the 2002 Legislature. The Commission concluded that seven unorganized areas meet the standards for borough incorporation. Those areas are the Aleutians West Model Borough; Chatham Model Borough; Copper River Basin Model Borough; Glacier Bay Model Borough; Prince William Sound Model Borough; Upper Tanana Basin Model Borough; and Wrangell-Petersburg Model Borough.

²⁸ 2003 Unorganized Borough Report.

Table 3-2

ORGANIZED AND UNORGANIZED REGIONS OF ALASKA RANKED ACCORDING TO PER CAPITA INCOME Boroughs are listed in capital letters and bold text (2000 Census Data)	
Boroughs and Census Areas	Per Capita Income
CITY AND BOROUGH OF JUNEAU	\$26,719
DENALI BOROUGH	\$26,251
MUNICIPALITY OF ANCHORAGE	\$25,287
Aleutians West Census Area	\$24,037
KETCHIKAN GATEWAY BOROUGH	\$23,994
CITY AND BOROUGH OF SITKA	\$23,622
Wrangell-Petersburg Census Area	\$23,494
Valdez-Cordova Census Area	\$23,046
CITY AND BOROUGH OF YAKUTAT	\$22,579
BRISTOL BAY BOROUGH	\$22,210
KODIAK ISLAND BOROUGH	\$22,195
HAINES BOROUGH	\$22,090
FAIRBANKS NORTH STAR BOROUGH	\$21,553
MATANUSKA-SUSITNA BOROUGH	\$21,105
KENAI PENINSULA BOROUGH	\$20,949
NORTH SLOPE BOROUGH	\$20,540
Skagway-Hoonah-Angoon Census Area	\$19,974
ALEUTIANS EAST BOROUGH	\$18,421
Prince of Wales-Outer Ketchikan Census Area	\$18,395
Southeast Fairbanks Census Area	\$16,679
Dillingham Census Area	\$16,021
Nome Census Area	\$15,476
LAKE AND PENINSULA BOROUGH	\$15,361
NORTHWEST ARCTIC BOROUGH	\$15,286
Yukon-Koyukuk Census Area	\$13,720
Bethel Census Area	\$12,603
Wade Hampton Census Area	\$8,717
Average of all organized boroughs	\$23,699
Average of the unorganized borough (Census Areas)	\$16,776

There are a number of unorganized regions that have expressed concern that they may be compelled to form boroughs even though they might not be able to afford to do so. In deciding whether any borough should be formed, the Commission is required to make a thorough review of the financial capabilities of any region proposed for incorporation based on standards that have long been established in State law. The Commission clearly recognizes that it would be counter to the interests of the State to create organized boroughs that were not financially viable. Nonetheless, the Commission takes the position that there is benefit in addressing the concerns raised about this issue.

To address such economic concerns, however, the Legislature could establish a specific economic threshold below which it would be presumed that an unorganized region lacks the financial resources to operate a borough. For example, legislation could provide that if an unorganized region lacks at least two-thirds of the median per capita income of organized boroughs, a formal presumption would exist that the region lacks the financial resources needed to operate an organized borough.

For illustrative purposes, Table 3-2 is provided on the previous page and lists organized and unorganized regions of Alaska according to per capita income as reported in the 2000 Census. The unorganized regions (i.e., census areas) listed in the table generally do not conform to prospective boroughs. However, unlike Bureau of Economic Analysis income data, Census Bureau data on per-capita income are available at the community level. The use of Census Bureau data would allow the Commission to make determinations spe-

cific to each prospective borough. All 16 of the organized boroughs are included in the table.

Promotion of Boroughs Embracing Large, Natural Regions

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska's Constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible . . .

In an effort to facilitate implementation of that constitutional mandate, the Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature. However, that recommendation was rejected. Instead, in 1961, the Legislature implemented Article X, Section 3 by dividing all of Alaska into a single unorganized borough. For the past four decades, State law has stipulated that the unorganized borough comprises that portion of Alaska not within organized boroughs.

From its inception, the unorganized borough has embraced an area and population with highly diverse interests rather than the maximum common interests required by the constitution. The contemporary contrasts in various parts of the unorganized borough are remarkable. As currently configured, the unorganized borough contains an estimated 374,843 square miles, 57 percent of the total area of Alaska. It ranges in a noncontiguous manner from the southernmost tip of Alaska to approximately 150 miles above the Arctic Circle. The unorganized borough also extends in a noncontiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough

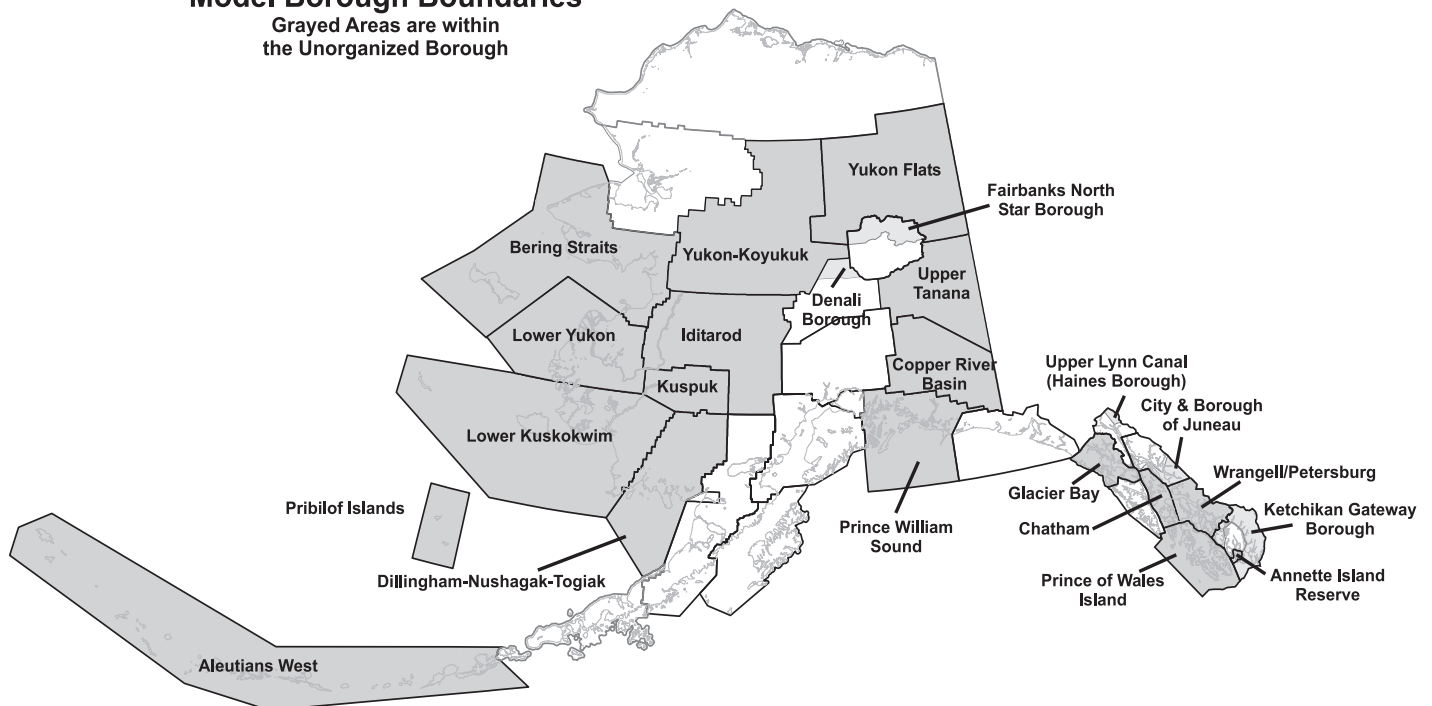
- encompasses portions of each of Alaska's four judicial districts;
- wholly encompasses eleven census areas;

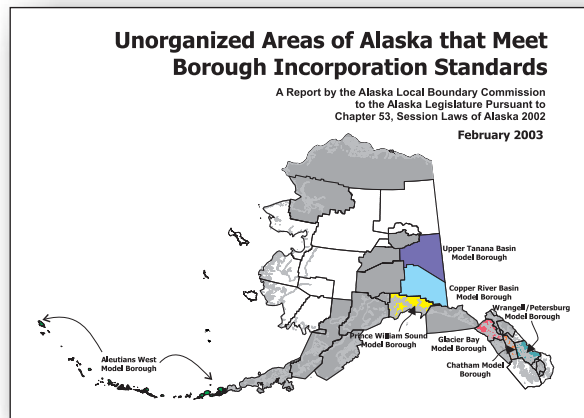
- encompasses all or portions of nine state house election districts;
- wholly encompasses 19 REAAs;
- encompasses all or portions of 10 of Alaska's 13 regional Native corporations formed under the Alaska Native Claims Settlement Act; and
- partially encompasses model borough territory for five existing organized boroughs.

In short, the unorganized borough is comprised of a vast area with widely diverse interests rather than maximum common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many house election districts, census districts, REAAs, regional Native corporations, and model boroughs, each of which is

Model Borough Boundaries

Grayed Areas are within the Unorganized Borough





to some extent comprised of an area with common social, cultural, and other characteristics.

Greater compliance with the Common Interests Clause of Article X, Section 3 of Alaska's Constitution could be achieved with respect to the unorganized borough if AS 29.03.010 were amended to divide the single unorganized borough into multiple unorganized boroughs formed along natural regions.

The foundation for such an effort already exists in the form of model borough boundaries established by the Commission between 1989 - 1992. However, just as the formal corporate boundaries of organized boroughs in Alaska are flexible to accommodate changing social, cultural, and economic conditions, the Commission recognizes that the model borough boundaries must also remain flexible. It has been thirteen years since efforts were initiated to define model borough boundaries.

The Commission has found that in certain instances, social, economic, or other developments might warrant a change to model boundaries. For example, when the model borough boundaries were developed, Adak was a huge naval base with its own REAA. Accordingly, the model borough boundaries

identified a separate prospective borough for the area from Adak west. Subsequently, however, the naval base at Adak closed and the Adak REAA merged with the Aleutian Region REAA. In its *2003 Unorganized Borough Report*, the Commission merged the Aleutians Military Model Borough into the Aleutians West Model Borough, thereby encompassing in one model borough all the territory west of the Aleutians East Borough.

Funding for Borough Feasibility Studies

AS 44.33.840 – 44.33.846 authorizes the undertaking of borough feasibility studies. Unfortunately, however, funding for the studies has never been appropriated. The Commission is aware of two regions that have recently expressed interest in conducting borough feasibility studies. Those are the Prince of Wales Island region and the Delta-Greely region. The Commission recommends that the Legislature appropriate at least \$50,000 annually to the fund to facilitate local borough study efforts.

In 2001, the City of Delta Junction was awarded a grant for a regional government study of the Delta-Greely REAA. The Commission also encourages grant funding for such studies.

Staff Resources Needed to Support the LBC

The LBC staff currently consists of two Local Government Specialists. Because those employees carry out significant other duties within DCED, their service to the LBC is, in effect, part-time. Adjusting for the other duties of those staff, the support they provide to the LBC, is, at most, equivalent to one and one-half full-time staff.

The current staff level represents a significant reduction over the past two decades. In the 1980s, the LBC staff consisted of three Local Government Specialists and one publication support staff position. Those four staff members were dedicated to full-time service to the LBC.

The workload and quality of work by the LBC staff has certainly not decreased since the 1980s. The LBC staff has been able to keep pace through extensive use of new technology and self-development of expertise. When workload becomes particularly

intense, LBC staff members have stepped up to the challenge by working extended hours without compensation. When possible, LBC staff members have been aided to a limited extent by other DCED staff.

The Commission encourages the Legislature to fund at least one additional staff person in the DCED budget to assist with Commission business.

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